

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
AMARILLO DIVISION

BRENT ROGERS DBA RON'S CAR WASH AND TIKI HUT

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V.

CIVIL ACTION NO.

UNITED STATES LIABILITY
INSURANCE COMPANY

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Defendant.

DEFENDANT UNITED STATES LIABILITY INSURANCE COMPANY'S
NOTICE OF REMOVAL

Defendant United States Liability Insurance Company (“Defendant”) files this Notice of Removal and respectfully shows the following:

I. **BACKGROUND**

1. On March 11, 2021, Plaintiff Brent Rogers DBA Ron's Car Wash and Tiki Hut ("Plaintiff") filed this lawsuit in Gray County, Texas, against Defendant.
2. Plaintiff emailed a copy of the Petition to Defendant's registered agent on March 12, 2021.
3. Defendant has not yet answered the lawsuit.
4. Defendant files this notice of removal within 30 days of receiving Plaintiff's initial pleading. *See* 28 U.S.C. § 1446(b). In addition, this Notice of Removal is being filed within one year of the commencement of this action. *See id.*
5. As required by Local Rule 81.1 and 28 U.S.C. § 1446(a), simultaneously with the filing of this Notice of Removal, attached hereto as Exhibit A is an Index of Matters Being Filed.

A copy of the Docket Sheet – Case Information Sheet is attached as Exhibit B. All of the filings from state court are attached as Exhibits B-1 through B-2. A copy of this Notice is also being filed with the state court and served upon Plaintiff.

6. Venue is proper in this Court under 28 U.S.C. § 1441(a) because this district and division embrace Gray County, Texas, the place where the removed action has been pending.

II.
BASIS FOR REMOVAL

7. Removal is proper based on diversity of citizenship under 28 U.S.C. §§ 1332(a), 1441(a), and 1446. This is a civil action between citizens of different states, and the amount in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs.

A. The Parties Are Diverse

8. Upon information and belief, Plaintiff is and was at the time the lawsuit was filed a natural person and resident of Gray County, Texas. *See* Exh. B-1, Pet. at 1, ¶ 1. On information and belief, Plaintiff intends to continue residing in Texas and is thus domiciled in Texas. *See Hollinger v. Home State Mut. Ins. Co.*, 654 F.3d 564, 571 (5th Cir. 2011) (explaining evidence of a person's place of residence is *prima facie* proof of his state of domicile, which presumptively continues unless rebutted with sufficient evidence of change).

9. Both at the time the lawsuit was originally filed, and at the time of removal, Defendant was a Pennsylvania corporation with its principal place of business in Pennsylvania. Accordingly, Defendant is a citizen of the State of Pennsylvania for diversity purposes. Therefore, complete diversity of citizenship exists.

A. The Amount in Controversy Exceeds \$75,000.00

10. This is a civil action in which the amount in controversy exceeds the jurisdictional limits of \$75,000. In determining the amount in controversy, the Court may consider, “penalties, statutory damages, and punitive damages.” *St Paul Reinsurance Co, Ltd v Greenberg*, 134 F.3d 1250, 1253 (5th Cir. 1998); *see Ray v State Farm Lloyds*, 1999 WL 151667, at *2 - 3 (N.D. Tex. 1999) (finding sufficient amount in controversy in plaintiff’s case against the insurer for breach of contract, bad faith, violations of the Texas Insurance Code and Texas Deceptive Trade Practices Act and mental anguish); *Watson v. Provident Life & Acc. Ins. Co.*, 2009 WL 1437823, at *6 (N.D. Tex., May 22, 2009) (reasonable statutory attorney’s fees may be included in determining the amount in controversy).

11. In this case, Plaintiff alleges causes of action against Defendant for (1) Breach of Contract, (2) violation of Chapters 541 of the Texas Insurance Code (Unfair Settlement Practices), and (3) violation of Chapter 542 of the Texas Insurance Code (Prompt Payment of Claims). *See* Exh. B-1, Pet. at 5-7, ¶¶ 15-19. Plaintiff seeks actual damages, attorneys’ fees, post-judgment interest and costs, treble damages, exemplary damages, and statutory penalty interest. *Id.* at 7-8, ¶ 25. Additionally, Plaintiff specifically pleaded that it seeks “monetary damages in an amount over \$250,000 but less than \$1,000,000.” *Id.* at 2, ¶ 5. This evidence clearly demonstrates that the amount in controversy in this case exceeds the jurisdictional requirements.

**III.
REMOVAL IS PROCEDURALLY CORRECT**

12. Plaintiff emailed a copy of the Petition to Defendant’s registered agent on March 12, 2021. Accordingly, Defendant files this Notice of Removal within the thirty-day time period required by 28 U. S. C. Section 1446(b).

13. Venue is proper in this District and Division under 28 U.S.C. §1446(a) because this District and Division include the county in which the state action has been pending and because a substantial part of the events giving rise to Plaintiff's claims allegedly occurred in this District and Division.

14. Pursuant to 28 U.S.C. §1446(a), all pleadings, process, orders, and all other filings in the state court action are attached to this Notice.

15. Pursuant to 28 U.S.C. §1446(d), promptly after Defendant files this Notice, written notice of the filing will be given to Plaintiff, the adverse party.

16. Pursuant to 28 U.S.C. §1446(d), a true and correct copy of this Notice of Removal will be filed.

IV.
CONCLUSION

Based upon the foregoing, and other documents filed contemporaneously with this Notice of Removal, which are incorporated by reference, Defendant United States Liability Insurance Company hereby removes this case to this court for trial and determination.

[Signature of counsel appears on the following page].

Respectfully submitted,

/s/ Daniel P. Buechler

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**ATTORNEYS FOR DEFENDANT
UNITED STATES LIABILITY
INSURANCE COMPANY**

CERTIFICATE OF SERVICE

I hereby certify that on the April 5, 2021, a true and correct copy of the foregoing instrument was served via the Court's electronic notification system on the following counsel of record:

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/s/ Matthew J. Kolodoski

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